



FAIR POLITICAL PRACTICES COMMISSION

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June 6, 2011

Peter Sturges
Atkinson, Andelson, Loya, Rudd & Romo
5075 Hopyard Road, Suite 210
Pleasanton, CA 94588-2797

Re: Your Request for Informal Assistance
Our File No. I-11-078

Dear Mr. Sturges:

This letter responds to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹ Nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter apply only to prospective actions. In addition, this letter is based on the facts presented. The Fair Political Practices Commission ("the Commission") does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Because you have sought general guidance not limited to a particular mailing, we are treating your request as one for informal assistance.²

Please note that our advice is based solely on the provisions of the Act. We therefore offer no opinion on the application, if any, of other bodies of law regarding the misuse of public funds including, but not limited to, Government Code Sections 8314 and 54964, Education Code Section 7054, and Penal Code Section 424. (Also see *Vargas v. Salinas* (2009) 92 Cal.4th 1 and *Stanson v. Mott* (1976) 17 Cal.3d 206.)

QUESTION

May the Davis Joint Unified School District (the "District") use public funds to mail senior citizen property owners within the District notices to inform them that an upcoming ballot measure affecting property taxes contains a senior citizen exemption and offering assistance in completing a form required to qualify for the exemption?

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

CONCLUSION

Generally, a mailing strictly limited to a letter on district letterhead to senior citizens potentially eligible for the parcel tax exemption explaining the exemption, offering the District's assistance in applying for the exemption, and providing the exemption form is informational and does not constitute campaign material. To the extent that this mailing also describes the purposes of a ballot measure following the description of the purposes expressly provided in the measure itself, the mailing may still be considered informational. However, we strongly caution that this general conclusion does not apply to additional descriptions or material that may be provided in or with the letter and that the entirety of the letter must be considered in determining whether any particular letter can be reasonably characterized as campaign material.

FACTS

The District will be seeking voter approval in the Fall of 2011 for ballot measures (Measures Q and W) authorizing it to renew existing parcel taxes on properties within the District's boundaries. Both of these measures will contain an exemption for senior citizens who will not have to pay the parcel taxes if they meet exemption requirements. These requirements include the filing of a timely exemption application attesting that the senior citizen is age 65 or older, that he or she owns the property in question, and that the property is his or her primary residence.

Historically, the District believes there have been misconceptions within the senior citizen community regarding the exemption process and the qualifications for an exemption. The District has regularly had to provide senior citizens with assistance in completing exemption forms and answer questions regarding qualifications for the exemption. The exemption will be expressly provided in District resolutions calling for the election, as follows:

“Senior Exemption From Special Tax. An exemption from payment of the special tax may be granted to any parcel owned by one or more persons 65 year of age or over who occupies parcel as a principal residence, upon application for exemption (“Senior Citizen Exemption”). Applications for such exemptions must be made and delivered to the District during the period from May 15 through June 30 (or the next regular business day thereafter) of each year the parcel tax is levied in accordance with the process established by the District and as described in the attached Ballot Measure (Exhibit B hereto).

Except for the phrase “and as described in the attached Ballot Measure (Exhibit B hereto),” the identical language will also be provided in the text of the actual ballot measures.

In anticipation of the upcoming ballot measures and potential confusion or questions regarding the exemption process, the District is planning a mailer under the following conditions:

- The letter will be sent to property owners within the District who are 65 years or older.

- The letter will reference the date of the parcel tax election and will give general information about the process for the election.
- The information in the letter will closely follow the information that is in the parcel tax ballot measures.
- The letter will not contain an express request that the recipient vote either for or against the ballot measures.
- The letter will be sent on District letterhead with information regarding District contacts, but not containing the names of, or information regarding, District board members.
- The letter will indicate that the District is writing the addressee because he or she is a senior citizen, that the District wishes to inform him or her about the upcoming parcel tax election, and that the measures seeks “voter approval” of the renewed parcel tax.
- The letter will contain a statement concerning the purposes of the parcel tax measures, including (1) a statement that the District is seeking to renew the parcel taxes in order to make up for funding shortfalls arising from the state budget situation and (2) information concerning the District programs that will have to be curtailed or eliminated if the District does not obtain additional funding through the parcel tax. However, the information provided would follow the description of the purposes for the parcel tax measures expressly provided in the ballot measures themselves.
- The letter will inform the addressee that, as a senior citizen who owns a parcel of land within the District, on which his or her primary residence is located, the addressee will not be subject to the parcel tax if he or she files for an exemption.
- The parcel tax exception form will be attached to the letter and be prefilled with the addressee’s name and address.
- The letter will offer assistance in completing the exemption form and provide a contact number for the District’s assistance.
- The letter will thank the addressee for his or her involvement as a District voter.

ANALYSIS

In addition to any laws outside of the Act that may also apply, the Act itself (1) restricts the use of public money for the mass mailing of campaign materials and (2) requires any governmental agency engaged in campaign activity to report contributions and expenditures if the agency qualifies as a campaign committee.

Restricting the mass mailing of campaign materials, Section 89001 broadly states that “[n]o newsletter or other mass mailing shall be sent at public expense.” Interpreting this broad prohibition and limiting its scope, the Commission has adopted both Regulation 18901, prohibiting the use of public moneys for certain mailings featuring or referring to an elected official, and Regulation 18901.1, prohibiting the use of public moneys for certain campaign related mailings. Based upon the facts you have provided the anticipated mailer will not identify or refer to an elected officer in any manner. Accordingly, Regulation 18901 does not apply to your particular facts, and we will not address it further. Nonetheless, a further look at Regulation 18901.1 is warranted.

Apart from those exceptions specified in Regulation 18901.1(b), Regulation 18901.1(a) prohibits mailings under Section 89001 if all of the following criteria are met:

“(1) The item sent is a tangible item, such as a written document, videotape, record, or button and is delivered, by any means, to the recipient at his or her residence, place of employment or business, or post office box.

“(2) The item sent either:

“(A) Expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage, or defeat of a clearly identified measure, as defined in Regulation 18225(b)(1).

“(B) When taken as a whole and in context, unambiguously urges a particular result in an election.

“(3) Public moneys are paid for either of the following:

“(A) The costs of distributing the item.

“(B) Costs, exceeding \$50, that are reasonably related to designing, producing, printing, or formulating the content of, the item including, but not limited to, payments for polling or research and payments for the salary, expenses, or fees of the agency’s employees, agents, vendors, and consultants, and the costs are paid by the agency with the intent of sending the item other than as permitted by this regulation.

“(4) More than two hundred substantially similar items are sent during the course of an election, including items sent during the qualification drive or in anticipation of an upcoming election, but excluding any item described in subdivision (b).”

A communication “unambiguously urges a particular result in an election” pursuant to Regulation 18901.1(a)(2)(B), if the communication meets either of the following criteria:

“(1) It is clearly campaign material or campaign activity such as bumper stickers, billboards, door-to-door canvassing, or other mass media advertising including, but not limited to, television or radio spots.

“(2) When considering the style, tenor, and timing of the communication, it can be reasonably characterized as campaign material and is not a fair presentation of facts serving only an informational purpose.” (Regulation 18901.1(c).)

Turning to reporting requirements, a payment of public funds by a state or local governmental agency in connection with a communication to the public that either (1) “expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage, or defeat of a clearly identified ballot measure” or (2) “when taking as a whole and in context, unambiguously urges a particular result in an election” is either a contribution, if made at the behest of the effective candidate or committee, or an independent expenditure. (Regulation 18420.1.)

Identical to the test articulated under the mass mailing provisions, a communication “unambiguously urges a particular result in an election” if the communication (1) is clearly campaign material or campaign activity or (2) when considering the style, tenor, and timing of the communication, it can be reasonably characterized as campaign material and is not a fair presentation of facts serving only an informational purpose. (Regulation 18420.1(b).) Payments qualifying as a contribution or an independent expenditure will qualify a state or local governmental agency as a committee subject to the Act’s reporting provisions if the payments exceed the thresholds of Section 82013.³

Under these rules, whether or not the District’s anticipated mailing can reasonably be characterized as campaign material is the most significant factor in determining whether the mailing is an illegal mass mailing and a contribution or independent expenditure potentially qualifying the District as a campaign committee subject to reporting. However, this determination is dependent on the totality of the circumstances in which any particular mailing is made. Accordingly, we cannot reach a conclusion regarding any particular mailing based upon the general conditions you have described.

Nonetheless, we can offer the following general assistance regarding the District’s anticipated mailing and note that both Regulation 18901.1 and 18420.1 distinguish campaign material from informational material. As anticipated, the District’s mailing will be sent on District letterhead to senior citizens potentially eligible for the parcel tax exemption to explain the exemption, to offer the District’s assistance in applying for the exemption, and to provide the

³ A person, including a state or local governmental agency, qualifies as a committee if the person (1) accepts contributions of \$1,000 or more, (2) makes independent expenditures of \$1,000 or more, or (3) makes contributions of \$10,000 or more. (Section 82013.)

exemption form. It is also significant that any description of the measures will “follow the description of the purposes for the parcel tax measure” actually contained in the express language of the ballot measure.

In this regard, a mailing strictly limited to a letter on district letterhead to senior citizens potentially eligible for the parcel tax exemption to explain the exemption, to offer the District’s assistance in applying for the exemption, and to provide the exemption form appears to be informational and not inconsistent with the types of materials one can expect from a governmental agency. Moreover, we reach the same conclusion even to the extent that the mailing provides a statement concerning the purposes of a parcel tax measure that follows the actual description of purposes of the measure as provided in the measure itself.

We do, however, strongly caution that this general conclusion does not apply to additional descriptions or material that may be provided in the letter. The entirety of the letter must be considered in determining whether any particular letter can be reasonably characterized as campaign material. If you have specific questions related to a future mailing, we recommend seeking further assistance regarding the actual mailing and providing the factual circumstances in which the mailing is made.⁴

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

John W. Wallace
Acting General Counsel



By: Brian G. Lau
Counsel, Legal Division

⁴ Because the entirety of a letter must be assessed in determining whether any particular letter is campaign material, we reach no conclusion regarding the sample letter you have provided. In this regard, Regulations 18420.1(d) and 18901.1(e) provide the following factors for assistance in making this determination:

- Whether the communication is funded from a special appropriation related to the measure as opposed to a general appropriation.
- Whether the communication is consistent with the normal communication pattern of the agency.
- Whether the communication is consistent with the style of other communications issued by the agency.
- Whether the communication uses inflammatory or argumentative language.